

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MARVIN SMITH SHAHEEN,

Plaintiff,

v.

9:05-cv-0173

P. McINTYRE, Correction Officer; J. FRAZIER, Correction
Officer; J. HOESSLE, Correction Officer,

Defendants.

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

Plaintiff, a former inmate in the New York State prison system, filed the instant claiming that he was retaliated against for having filed misconduct reports against corrections officers. The Complaint was filed in February 2005 while Plaintiff was still incarcerated. In August 2005, Plaintiff was released from prison. Thereafter, also in August 2005, Defendants attempted to serve their Answer upon Plaintiff. According to Defendants, the Answer was returned as undeliverable because Plaintiff had been released from the prison system and did not provide Defendants or the Court with a new address. In October 2005, the Court issued a pre-trial scheduling order which was returned as undeliverable because Plaintiff failed to provide the Court with a new address. Currently before the Court is Defendant's motion to dismiss for failure to prosecute.

Five months after the filing of the motion, Plaintiff has now responded to the motion. Plaintiff contends that he was released from the prison system in August 2005, he

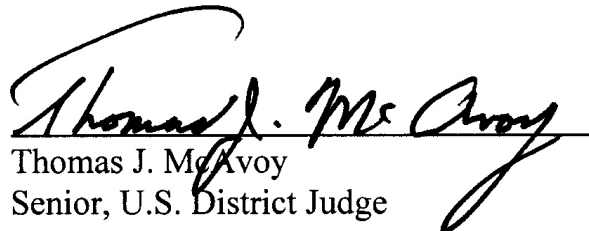
thereafter resided in a shelter without access to a mailbox, and he was arrested in September 2005 and has since been in the custody of the Westchester County Jail. Plaintiff contends that, during this time, he did not have access to his federal docket number, but attempted to communicate with the Court's Clerk's office to continue this action.

Plaintiff clearly has not exercised diligence in prosecuting this action. Nevertheless, because Plaintiff has appeared and expressed his desire and willingness to continue with this litigation, the Court declines to dismiss at this time for failure to prosecute. Plaintiff should take heed, however, of his obligations to fully comply with the local rules of this Court, including his obligation to keep Defendants and the Court timely apprised of any address changes. **Any future failures to keep Defendants and the Court apprised of address changes will result in the dismissal of this action. Plaintiff is directed to proceed with this litigation forthwith. Any future failures to comply with deadlines in this matter may result in the dismissal of this action.**

The Pretrial Scheduling Order is hereby Amended such that discovery shall be completed on or before January 12, 2007 and dispositive motions, if any, shall be filed on or before March 9, 2007.

IT IS SO ORDERED.

Dated: September 6, 2006


Thomas J. McAvoy
Senior, U.S. District Judge